

CHINESE QUESTION

CHONG-SU SEE



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The Chinese Question

THE UNDERLYING CAUSE OF THE PRESENT
CRISIS IN CHINA

BY

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"THE FOREIGN TRADE OF CHINA"

[NEW YORK, 1919]

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樹

MANILA, PHILIPPINE ISLANDS

THE BULLETIN PUBLISHING COMPANY, INC.

1925

327.51
.54

WITH THE COMPLIMENTS
OF
THE AUTHOR

123 JUAN LUNA STREET

MANILA, P. I.

To
Those who believe
In Justice and Fair-play for All,
Regardless of Nationality,
Color or Creed

P R E F A C E

THE following is a series of three articles on the present situation in China written by a businessman. The Chinese people are now passing through a great national transformation and the whole movement is pregnant with meaning. The underlying cause of the present crisis in China is to be attributed to the superior status of foreigners in that country—a status which is guaranteed by the unequal treaties imposed upon China by the Powers since 1842. China is so bound by the treaties that she is not even permitted to fix her own tariff and is forced to discriminate against her own subjects in favor of aliens. It is only by giving these treaties a speedy and just revision so as to keep in harmony with the spirit of the times that any permanent solution to the Chinese Question can be found. Such a revision will prove beneficial to all parties concerned. It will quicken the industrial development of China and encourage the unrestricted growth of her foreign trade, the advantages of both of which will be shared by foreigners as well as Chinese. Moreover, the change will enable the young Republic to carry out the reforms that will develop her into a strong and progressive nation which is to be desired as much in the common interest of the world as for the sake of her own welfare.

This series of articles was originally written for the local periodicals and appeared in the *MANILA DAILY BULLETIN* on November 18 to 20, 1925, in the *SUNDAY TRIBUNE* beginning on November 22, 1925, while its Spanish translation was simultaneously published in three separate issues of the Saturday edition of *LA VANGUARDIA*. At the suggestion of certain foreign friends shortly after the publication of the first of these articles, however, it was considered advisable to put them in a more convenient form for those who are interested in Far Eastern affairs; hence the appearance of this booklet. In this connection the writer is glad of the opportunity to express his appreciation of the courtesy shown him by the management of the *MANILA DAILY BULLETIN* which is publishing this pamphlet without charge.

123 Juan Luna Street,
Manila, P. I.,
November 24, 1925.

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The Chinese Question

The Underlying Cause of the Present Crisis in China

ARTICLE I

Extraterritoriality

To dismiss the recent unfortunate happenings in China, which began in Shanghai on May 30 last and spread to other parts of the Celestial Republic one after another, as due to the sinister activity of the Bolsheviks is easy but very superficial. There is no use for us to camouflage the situation by painting the whole affair "Red" or by saying that it is anti-foreign. We must get at the facts and have the courage to face them squarely, however painful and humiliating they may be. No impartial observer of Far Eastern affairs can deny that underneath the present crisis is involved the whole question of the superior status of foreigners in China. This status is guaranteed by the unequal treaties imposed upon China by the Powers headed by Great Britain since 1842, and it is only by giving these treaties a just and equitable revision that any permanent solution to the Chinese Question can be found.

Briefly, the foreign relations of China date back to a most distant period. From time immemorial the Chinese have been preeminently a trading people. Even as early as the first century of the Christian era they carried on an active exchange in silk and other products with the Roman Orient. Originally they were not exclusive, but, on the contrary, assumed a remarkably liberal attitude toward foreign intercourse, such as has been shown by no other nation in the world.

They welcomed embassies from neighboring countries and despatched missions abroad to foster trade and other relations. The portals of the Kingdom were thrown wide open to all aliens, regardless of calling, profession and creed. There was neither closing of markets nor imposition of restrictions on the practice or propagation of exotic faiths. Foreigners were admitted everywhere, and even high official positions were open to strangers from afar. The whole policy was one of complete toleration and genuine hospitality, of "open door" in the truest sense of the term. This attitude continued throughout ancient and mediaeval times—the period in which all aliens who voluntarily resorted to China's dominions respected her laws and conformed with her institutions.

With the coming of the modern era, however, the situation was entirely transformed. At the commencement of the sixteenth century we witness the arrival of pioneers from Europe. These representatives of so-called peaceful commerce were no better than pirates, for, unlike their pacific Arab predecessors, they introduced themselves to the Chinese by harrying the coasts of the Empire and plundering whatever valuables came their way, by committing unprovoked murders, rapine, and countless deeds of violence as well as setting at defiance all principles of propriety and humanity. This atrocious con-

duct of the unwholesome specimens from the Occident compelled China to abandon her original generous attitude in all affairs touching aliens and to replace it by a rigid policy of surveillance and exclusion. This was, doubtless, a most radical change, but it was forced on China by the outsiders. As time went on, the new policy, instead of losing strength, was pursued with added vigor, for during later intercourse the westerners, who ought to have done something to correct the extremely bad impression created by their forerunners, continued to look upon things Chinese with a mien of offensive superiority, to disregard systematically Chinese laws and regulations, and to vindicate whatever they thought to be right by a ready appeal to brute force.

Under the "closed-door" regime all kinds of barriers were put up against foreign intercourse. The external trade of the country was subjected to oppressive taxation and other onerous conditions; and from 1757 to the middle of the last century it was permitted at no other place than the port of Canton. Quite naturally these restrictions proved very annoying to the foreign traders, more particularly to the British, whose trade preponderated. They generated a great deal of ill-feeling and hatred between the Chinese and the foreign community at Canton, and led to frequent disturbances, which culminated in open hostilities with Great Britain, when the English tried to force upon China that vitally important branch of their trade with the Orient—the immoral and illegal traffic in opium. In the Opium War—as the conflict is called—China was defeated. England, acting under the impulse for free trade at the time and feeling the urgent need of foreign markets for her surplus production, as a result of the Industrial Revolution, coerced China to sign the Treaty of Nanking in 1842, by which the latter was opened to foreign trade under terms prescribed by the former.

The old restrictions on foreign intercourse were removed, while freedom of action and increased facilities for trade were conceded. Henceforward the alien in China was to enjoy, and he still enjoys, a superior status guaranteed by written compacts. This marks the beginning of the conventional period in China's international relations.

The new regime, however, was only another artificial and precarious system of regulating intercourse. It proved most vexatious to China, as it would be to any self-respecting nation. It did not create better relationships between China and the West. The outrages which the Chinese suffered at the hands of the Europeans were not forgotten and the old rancor towards the foreigner remained smouldering, only to be kindled into a flame with the weakest draught. Under such circumstances it would require much conciliation and great forbearance before friendship could replace hostility and foreign intercourse be welcomed and encouraged, instead of being a thing to be tolerated and dreaded. Most unhappily, however, no attempt at appeasement has ever been made since the commencement of the treaty period. On the contrary, the foreigner has assumed an increasingly domineering air and has constantly refused to treat the Chinese on a footing of equality even on their own soil. Since the middle of the last century the policy of the different nations in China has been one of greed and aggression, not of mollification and consideration. They have extorted heavy money indemnities from China for acts of their own provocation, earmarked for themselves "spheres of influence" within her undisputed territory, and, under all sorts of pretexts, coerced her to agree to valuable "leases" and concessions, besides obtaining many far-reaching rights and special advantages—all to the utter derogation of her sovereignty and in flagrant discrimination against the interests of the Chinese people.

By these later exactions the rights secured in 1842 have been greatly strengthened and multiplied, so much so that the position of the alien in China today is a highly dominating and privileged one, such as does not exist in other lands.

So the last eighty odd years of continuous intercourse have abundantly confirmed the old belief of the Chinese that the chief interest of the foreigner in China is one of money-making and land-grabbing. During this period China has learned the bitter lesson that, inasmuch as the Powers that claim to be leaders of Christianity and modern culture have invariably resorted to superior force for the accomplishment of their will, Western civilization is largely destructive of civilized life itself; and that until China has attained military and naval efficiency she can expect no equal treatment from outsiders.

By the various treaties of "amity and commerce", as the conventions which the Chinese were forced to sign are called, China was stripped of two of the fundamental attributes of sovereignty, the two main divisions of practically all international agreements, to wit, the jurisdiction over the person and property of foreigners within her dominions and the regulation of her commerce with the outside world. Let us briefly examine each of these and see how it affects foreign intercourse in general and foreign commerce in particular.

Among the treaty stipulations the most important is that of extraterritoriality. By it the foreigner is everywhere withdrawn from Chinese control and is rendered amenable only to the officials of his own government. In criminal cases he is judged according to the criminal code of his own country, and it is the commercial laws of his home land also that govern his civil cases. However essential this arrangement may be from the foreigner's standpoint, it is intensely galling to the Chinese. Just imagine what would be the effect on the

United States if England and France were to govern their nationals in Boston and New York City through their respective consuls and pay no attention whatsoever to American laws. Doubtless such a thing would be regarded as a glaring outrage upon American sovereignty and would not for a moment be tolerated by the people of the United States. And yet that—and much more besides—is exactly what the Powers have done in China and forced the Chinese to acquiesce in.

That the system should create a great dislike for the foreigner is only natural. The fact that the alien is exempt from local jurisdiction leads him to believe that he is under no obligation to observe the laws of China, including the customs, practices, and superstitions of a locality, which, although unwritten, are, nevertheless, obligatory on every resident within the community. Some of these customs and practices appear peculiar and even ridiculous to the foreigner, who, because of their absurdity, whether apparent or real, usually treats them with contempt. But such disrespect gives rise to local ill-feeling; and the insult is most keenly felt, owing to the intimate relationship between the customs and the locality. Moreover, the alien in China enjoys a special protection, which is not accorded to the natives. While he is not amenable to any Chinese tribunal, China has always been held absolutely responsible for any injury which might be done to his person or property, irrespective of her ability to prevent it. This strict accountability amounts to a guarantee of security, an obligation which the Powers do not recognize in their intercourse with one another. If in countries where extraterritoriality does not exist, such a liability is not assumed by the territorial government, how unjust it is to compel China, where aliens are altogether outside of her jurisdiction, to do so.

Furthermore, under the aegis of extraterritoriality, offences perpetrated by foreigners against natives often go unpunished or escape without the deserved penalty. In mixed cases in which the plaintiff is a Chinese, the consular officer, who is sent to China to protect his compatriots, is apt to be prejudiced in favor of the latter and cares little, if at all, whether the settlement is satisfactory to the complainant or not. As a defendant, the Chinese is also at a disadvantage not only because the foreigner is helped by the advocacy of his consul, but also because of the fact that for the same wrong committed in China different punishments are meted out. If the offender is an alien he is leniently dealt with by his own national laws, but if he is a Chinese he is treated with severity by the native tribunal. Again, many of the extraterritorial courts, those of the small powers in particular, are not properly administered; and the unapproved practice of sending their nationals who committed grave misdeeds in China to the home country for trial, of which the outcome is, as a rule, unknown to the Chinese party interested in the case, tends to produce the notion that such offenders have not been brought to justice.

The extraterritorial system also gives rise to a multiplicity of courts in one and the same locality, each administering a different code of laws under a different judicial procedure, and the relation between these courts has often placed lawyers and litigants in a confused and embarrassing situation. Moreover, the customary way of applying the law of the defendant's country makes the law uncertain. For instance, in the case of a transaction between two merchants of two different nationalities the rights and liabilities of the parties concerned vary according as to which party files the suit first.

Finally, the existence of extraterritoriality has the effect of leading the Chinese to despise their own Government. Not only have

the Chinese authorities no control over the alien, but in many instances they have shown themselves powerless to offer their subjects adequate protection against foreign encroachments. The special status enjoyed by the alien is denied to the Chinese. Consequently, dishonest foreigners have found it very profitable to indulge in the illegal practice of giving the protection of their national flag to unscrupulous natives, who, for example, pass their merchandise as belonging to their foreign accomplices in order to evade inland taxation, from which the foreigner is exempted. So, while honest Chinese merchants suffer, those who break the laws of the country with the assistance of the extraterritorialized foreigner are greatly benefited. And if the Chinese authorities manifest a tendency to protect legitimate native interests they are criticized and denounced by outsiders, as though to look after the welfare of one's own people is presumptuous and illegitimate. Thus the administration of the country is deranged and the Chinese officials are humiliated in the discharge of their duties.

The spirit of extraterritoriality permeates the treaties through and through, and its presence indicates a partial sacrifice of sovereign authority by China. But if the Chinese are to enjoy any degree of independence at all it may be readily inferred that a limit must be set to the special privileges of the foreigners. In order that the system may run more or less smoothly and in order that the alien may be under the constant protection of his official, the two parties must be situated comparatively near each other. So for purposes of trade the alien in China is restricted to certain localities within the country which have been declared open to international residence and trade, although for purposes of evangelization the foreign missionary is also permitted to reside in the interior. These commercial centers are usually classified under four different heads. To

start: we have the "treaty ports," which are thrown open, by the different treaties and agreements between China and the Powers, as places where foreign states are entitled to establish consulates and foreign merchants are permitted to do business "without molestation and restraint." Originating with the Treaty of Nanking in 1842, these ports were five in number; since then they have been largely increased. At some of these ports spaces are set aside as settlements or "reserved areas for residence," as at Shanghai, where the administration is in the hands of a municipal council, but the power of issuing title-deeds is retained by China. At others, as at such important commercial centers as Tientsin and Hankow, there are several foreign concessions, each representing a different nationality and administered by a municipal council composed of representatives elected by the foreign taxpayers living in the concession or, in the absence of such a municipal council, by the consul of the grantee power for the exclusive benefit of his countrymen. In these foreign settlements or concessions Chinese subjects are allowed to reside, but the real estate within them is, as a rule, not open to Chinese ownership. Owing to the jealousy among the Powers the tendency in recent years has been towards the separation rather than the amalgamation of concessions.

Although the foreign settlement in a treaty port represent no transfer of territory by China, and, therefore, remains subject to her sovereignty, yet there exists a disposition among the foreign community there to assume a constant air of patronage and proprietorship, and to regard the Chinese residents within it as being there by sufferance. This has proceeded so far that in Shanghai, the great emporium of China, there is a park at the entrance of which was displayed until recently the disgraceful sign: "Chinese and dogs not admitted." Is such a thing imaginable

anywhere else on earth? Incredible as it may sound, that is, nevertheless, the treatment extended to the Chinese people by the representatives of the great Powers of the world, which have arrogated to themselves the title of the leaders of modern Christianity and civilization. If the foreigners persist in treating the Chinese as inferiors, how is it possible for them to expect permanent good relations and much commercial expansion? Outrages like this are maintained by the mailed fist. Will it require another mailed fist to remove them? We earnestly hope not.

So much for the "treaty ports." Somewhat akin to the treaty ports are the ports voluntarily opened to international trade by China herself, such as Chinwangtao in Chihli, and Tsinan Fu in Shantung. Here both foreign and Chinese merchants are equally privileged to lease land within the limits of the port, which are fixed by the Chinese Government. But these places have not been put on the same footing as the treaty ports, for, to quote a provision from the regulations for one of them (Tsinan Fu), "the control of all affairs therein shall pertain entirely to China; foreigners must not interfere." This is the view held by the Chinese authorities, but the Powers have maintained a different opinion on the subject; the latter insist that the stipulations as regards the regular treaty ports are also applicable to the voluntarily opened ports.

Then we have the ports situated in the territories "leased" to certain treaty Powers by China, such as Port Arthur to Russia, Kwangchowwan to France, and Weihaiwei to England. These districts were leased primarily for political reasons. Being important strongholds they possess a high strategic value, which enables the lessee governments to preserve their balance of power in China. However, the leased areas have also a commercial purpose for their existence, and are

usually opened to international trade and residence.

Lastly, there are the ports of call, which are stages established along the great rivers, where "steamers shall be allowed to touch for the purpose of landing or shipping passengers or goods," but where "foreign merchants will not be authorized to reside or open houses of business or warehouses." There are now twenty-five ports of call in China, nine on the Yangtze and sixteen on the West River. As for the ports and places opened to foreign trade by treaties or by the Chinese Government on its own initiative, which comprise the first three classes, the number is eighty-three.

In addition to these four kinds of commercial ports we may mention the legation quarter at Peking wherein each power stations a permanent guard for the security of its legation. From the Chinese point of view the establishment of foreign guards and garrisons is not a shield but a spear and until it is removed permanent good relations are not to be expected. The reason for stationing the troops and guards, which was to prevent the recurrence of the "Boxer" troubles, does not exist any longer. The Chinese people believe in what is right and reasonable and so strong is this belief of theirs that they spurn the thought that it is necessary to back up or enforce their right by might. They use force only when they are irritated and humiliated to the utmost. So long as the Powers keep their oft-repeated promise to maintain the independence and integrity of China, and refrain from committing on Chinese soil such outrages as those preceding the Boxer Rebellion, they can fully rely on the non-recrudescence of anti-foreign outbreaks and the faithfulness of the Chinese to perform their international obligations as they have demonstrated in the past. Moreover, China has shown her ability to give adequate protection to the legations during the European War, when the num-

ber of foreign troops was largely reduced.

Outside of the fixed limits of the commercial ports discussed above, that is, in the interior of China, the alien may travel "for pleasure" or "for purposes of trade" only when he is provided with a passport, issued by his consul and countersigned by the Chinese authorities. He is prohibited from lingering at an inland place after his business transaction has been concluded. But he may be permitted to carry on railway or mining enterprises in the interior by the special authorization of the Chinese Government. In such cases the restrictions on the ordinary alien merchant are inapplicable, and the foreigner who is given a mining or railway grant is placed under the especial protection of the Chinese authorities.

Without doubt the imposition of the restrictions on the traffic of the foreign merchant in the inland and the limiting of his activities to those ports and places, and those only, which have been specially set aside for purposes of international residence and trade are incompatible with the unfettered development of his commercial interests in China. The system is artificial and it checks the free movement of foreign capital throughout the country, thereby blocking the industrial progress of China. Owing to the lack of a code binding upon native and foreigners alike, the alien considers it risky for him to invest in the interior of China without invoking the support of his own government. This accounts for the fact that foreign investment in China has formed the subject matter of many a diplomatic negotiation, of which the results are detailed in the archives of the different capitals. But industrial undertakings of this type or "concessions," as they are called, have been granted by the Chinese only with the greatest reluctance. China has no jurisdiction over the alien, and in case of disputes between him and the natives he is supported

by his own government, and victory is always on his side, while the interests of the Chinese are rarely, if ever, given their due consideration.

Moreover, many of the foreign enterprises in China are not bona fide business undertakings, but are established under the mask of private corporations by imperialistic governments for purposes of aggression. So in quite a few cases the application of foreign capital instead of leading to industrial advancement, as it ought to do, has resulted in the curtailment of certain of China's sovereign rights. Herein lies the explanation that although the Chinese have not the requisite capital to tap the hidden resources of their country, they have, nevertheless, looked upon foreign investments with suspicion and pursued the apparently detrimental policy of not letting the foreigner do more than they could possibly help. With them it is simply a question of expediency, of avoiding unnecessary complications with foreign governments which are constantly looking for a chance to file a "friendly" ultimatum at Peking. The Chinese are not, as outsiders allege, hostile to all foreign investments. They oppose only those that have ulterior motives behind them; while investments which are intended solely for the legitimate returns of business are always accorded their merited welcome. A large part of the reason why the Chinese are invariably anxious to do business with the United States is because they know that American capital and enterprise in

China are devoid of all political designs, and look only for the ordinary profits of investment. The absence of a mechanism by which foreign capital can be readily brought into use is much to be lamented, for China, like all developing countries, and being herself the greatest of them all, needs money and credit in abundance and offers unprecedented opportunities for investment and commercial expansion.

Under the circumstances which we have described in the preceding paragraphs the natural growth of the foreign trade of China cannot but be greatly obstructed. For this China is not to be blamed. We must remember that the various restrictions placed on the activities of the foreign merchant constitute a necessary corollary to his enjoyment of the immunities of extraterritoriality. If the Chinese Government prohibits the alien from going wherever he pleases, from holding land and establishing commercial houses wherever he chooses, it is because he insists on doing business in China without being amenable to the laws of the country. The arrangement is artificial and doubtless involves inconveniences, if not hardships, but it is the unavoidable outcome of the foreigner's exemption from the *lex loci*. For as soon as extraterritorial jurisdiction is abolished in China the whole country will be thrown freely open to the residence and trade of all foreigners. But so long as it exists, so long will the restrictions have to remain.

The Chinese Question

The Underlying Cause of the Present Crisis in China

ARTICLE II

Customs Tariff

We have already dealt with extraterritoriality. Coming now to the other inalienable right of sovereignty denied to China by the Powers, namely, the regulation of her foreign commerce, we discover that China is so bound by the treaties that she is not even permitted to fix her own tariff. The rate provided is a uniform five per cent *ad valorem* on both imports and exports—a rate which has remained unchanged for the last eighty-three years, which China has not the slightest chance to raise and which, in practice, is never effective, as we shall see presently. Imports having paid their duty at an open port once may be re-exported duty-free to another open port within three years; and if the imported articles are intended for a foreign port they are entitled to a drawback or refund of the sum originally paid. Compare this tariff with the average rate of 15 per cent to 60 per cent levied on imports by other countries.

In addition to enjoying this most moderate of existing tariffs the foreign merchant is privileged to take his imported goods to, or bring Chinese produce from, an inland market by paying a commutation tax equivalent to one-half the tariff duty, or $2\frac{1}{2}$ per cent *ad valorem*. Having paid this "transit due," as the tax is called, his merchandise is exempt from all "inland charges," which weigh most oppressively on Chinese traders. Thus China is forced to discriminate against her own subjects in favor of aliens.

In the third place, along the land frontiers of Manchuria, Mongolia,

Eastern Turkestan, Yunnan, and Kwangsi, China had to concede without condition an extra rebate on the ordinary tariff duties. In the first three named places the reduction on the imports is equivalent to one-third of the regular tariff duty of 5 per centum, while in the last two the special rates amount to those of the ordinary tariff less three-tenths on imports and four-tenths on exports. There is no valid reason for the existence of this preferential treatment inasmuch as China has received nothing for it in return. Its removal has been under discussion since 1914 and we hope that the attempt will soon meet with success. Fourthly, foreign merchants are exempt from all local taxation at the treaty ports, and within the "areas reserved for foreign residence and trade" all taxes are collected for the sole benefit of such special areas.

Nor is this all. For, in the fifth place, the alien has the right to participate in the coasting trade and inland navigation of China. In other countries these privileges are generally reserved by the sovereign power for the exclusive enjoyment of its own subjects. Nevertheless, China was compelled to grant them to outsiders, and this not according to the tariffs and regulations imposed upon native merchants but according to rules set up by the foreigner and for the foreigner's benefit. The injustice of these concessions is further increased by the fact that those same outsiders, also, not only enjoy exceptional commercial advantages, but are invested with the immunities of extra-

territoriality. The right to engage in the coast trade is clearly stipulated in the Treaty of Tientsin signed between China and Denmark in 1863. As for inland navigation, the privilege was conceded in 1858, when the Yangtze River was opened to the traffic of British steamers. Since then the scope of this right has been widened, and today the navigation of the greater part of the inland waters of China is enjoyed by all vessels under the foreign flag. The foreign participation in the coasting and river traffic, although introducing safer and quicker methods of transportation, has, nevertheless, been injurious to Chinese shipping trade, and in particular the junk owners, and has put out of work the great number of boatmen formerly under their employ. It is encouraging to learn that much native capital has already been invested in steamers and it is hoped that the local trade of China will be restored to the Chinese flag in no distant future.

Such are the principal commercial privileges of the alien in China. In view of their far-reaching importance, however, it seems advisable to survey them a little further than has just been done. To begin with, the Chinese tariff is not a statutory but a conventional tariff, enforced by treaties with the Powers and applies to all of them alike. Most of these treaties are what the jurist calls *iniquum foedus*; they were imposed upon China as the results of military defeats, and as such were drawn with little, if any, regard for the economic conditions of China, inasmuch as the primary motive of all foreign negotiators was to safeguard the interests of their own countries at all possible angles. Consequently, China was coerced into giving preferential treatment to foreigners as against her own subjects.

The tariff impost is levied on exports as well as imports. This prevents the Chinese government from pursuing the almost universal economic policy of facilitating the export of home products, and this in

a country where the balance of trade has, with few exceptions, been "unfavorable" ever since 1864. The presence of the export tariff accounts in part for the rapid decline of the tea exports and the slow progress of the silk trade; and tea and silk are the two chief staple exports of China. Export duties constitute an obstacle to the development of a nation's foreign trade and that is why they are seldom utilized by the industrially advanced countries of the world. China is today passing from local to national economy and under such circumstances export duties are inexcusable. During this transition, at least, her export tariff should be abolished in order to accelerate the economic development of the country. The advisability of such a measure has long been appreciated by China, and it is only because of her fiscal exigencies that the suicidal policy of taxing exports is continued.

Moreover, the Chinese merchant, who is handicapped by the export duty, is subjected to the intolerable *likin*, which is a tax levied on merchandise in inland transit. *Likin* stations are to be found at all large towns and along the important trade routes, whether by land or by water. Their presence constitutes an impediment to the free movement of traffic. It is hard to estimate the percentage of the tax on the value of goods, but usually the rate is three per cent at the departure station and about two per cent at every inspecting station. As a rule, the total amount collected within a province does not go above ten per cent, but if the merchandise is shipped through several provinces the *likin* may be as high as twenty and even twenty-five per cent of the value. For instance, Hangehow silk shipped to Peking for sale has to pay a tax of 18 per cent on raw material. From these harassing taxes the alien merchant is entirely exempt by the payment of a light commutation tax of $2\frac{1}{2}$ per cent. That is why cotton mills in China can obtain their raw materials from the

United States or India at a lighter duty than cotton shipped from one Chinese province into another. To take a more concrete example of this discrimination in favor of outsiders: Timber transported from Fengtien and Antung (Chinese territory) to Peking is taxed at five different places, paying in all a duty equivalent to 20 per cent of its market value; while timber from America pays no more than 10 per cent, including transit dues and the Peking *octroi*. Again, timber from Jueichow to Hankow and Shanghai has to pay duties at six different places, the sum total of which aggregates 17½ per cent, while timber imported into these same ports from abroad is dutiable only at one-third the amount. And these rates on Chinese goods are the minimum.

So here again the foreigner is accorded special privileges at the expense of the Chinese people. The fact that this is so, the fact that the Chinese are denied the exemption given to foreigners, has led the latter to sell their names to unscrupulous Chinese merchants, who are thereby enabled to pass their goods as foreign consignments and so to evade the oppressive taxes. In addition to this abuse of selling transit passes, the exemption of foreign merchandise from the *likin* taxation is difficult to operate. In a country so vast in size as China it is absurd that the foreigner should be entitled to carry his goods from or to a port, to or from any place in the interior, however distant, upon paying only 2½ per cent in the form of transit dues. Furthermore, the system does not take into account the circumstances and requirements of the provinces of China, each of which is a small state in itself, attending to its own finance and taxation. The *likin* is one of the chief sources of provincial revenue. The exemption of foreign goods from this tax has caused some derangement to the provincial administrations, inasmuch as the transit dues (inwards and outwards) and a part of the *likin* are collected by the Maritime Customs and paid

to the Central Government, and of whatever goes to Peking the provinces receive nothing. Owing to this impracticability the inland transit question has given rise to much dispute and ill-feeling between China and the treaty Powers.

The duty of a modern government is to encourage and not to check home industries. Inland taxes on domestic products are rare. For a long time the Chinese government has realized that the system of levying the *likin* and other taxes on merchandise is vexatious to the people and detrimental to the interests of trade, domestic as well as foreign; and hence it should be abolished. The financial needs of the nation, however, makes it imperative that the *likin*, which is one of the main sources of revenue, amounting to something like Mex. \$60,000,000 a year, should be retained until an adequate substitute for it is found. The Mackay Treaty of 1902 with Great Britain and the Commercial treaties with the United States and Japan in 1903 provide for the complete abolition of the *likin* and the increase of the Customs duties as a compensation. But on account of the lack of unanimous approval among the Powers these treaty stipulations have remained "paper reforms" to this day. Several times during the last fifteen years, especially at the Washington Conference in 1922, China has brought up the question before the various governments, but she has not, as yet, succeeded in getting a solution from them. At the Special Tariff Conference which is now convening at Peking, however, the Powers have agreed to consider this subject and it is earnestly hoped that some arrangement will be made for the abolition.

Similar in nature to the transit due is the coast-trade duty, which is levied on goods transported from one port to another. The rate is fixed at 2½ per cent *ad valorem*. Like the inland transit due the coast-trade duty constitutes an obstacle to local and foreign trade, and the sooner it is abolished the

better it will be for the material transformation of China. Here also the continuance of the tax is due to the country's lack of revenue.

The present Chinese tariff is unscientific for it does not take into consideration the economic and social as well as the fiscal needs of China. The rate on imports is put on a uniform five per cent basis. It makes no distinction between manufactured goods and raw materials, or between luxuries and necessities. For instance, machinery and similar merchandise ought to be admitted at a lower rate of duty in order to accelerate the industrial development of China, while the importation of such luxuries as wine and tobacco ought to be discouraged by the imposition of a higher tax so as to mitigate the unwholesome effects on the habits of the Chinese people.

Moreover, the tariff is unsatisfactory from the fiscal standpoint. Everyone will admit that the five per cent duty is far too low for revenue purposes. Contrast this with the duties imposed on Chinese goods abroad. In Great Britain, tea is taxed at 1 shilling per pound, or about 25 per cent; in Japan Chinese tobacco is assessed at 350 per cent and raw silk at 30 per cent; while in the United States silk and its products, even under the Underwood Tariff Law of 1913, have to stand a rate of duty ranging from 35 to 60 per cent *ad valorem*. Chinese products exported abroad must pay such duties as foreign countries choose to levy, but foreign articles imported into China can be subjected to only such taxes as are sanctioned by the iron hand of the treaty Powers. This explains why in 1913 Germany obtained about 45 per cent of her total ordinary income from customs and excise; why during the fiscal year of 1913-1914 some 39 per cent of the total Federal revenue of the United States was contributed by customs receipts; why in 1914 customs in France returned some 20 per cent of her total revenue, and duties on imports into free-trade England

amounted to more than 22 per cent of the total revenue of Great Britain, while Customs in China yielded only about 6 per cent of the total income.

Although China is in sore need of revenue and her Customs are not contributing their due share, nevertheless she cannot make them do so. The five per cent duty is fixed by the Powers and can be raised only with their consent, one and all, and for that consent each power can exact a price. Such a procedure is practically impossible of attainment, for however good an adjustment may be shown to be, every government would make its own decision and reject if it sees fit. For example, the Chinese Customs Tariff Treaty, which was signed by the nine Powers represented at the Washington Conference in 1921-1922, provides for the calling of a Special Conference to take up the question of the increase of the Chinese tariff "within three months after the ratification of the treaty," and France, because of China's refusal to accede to her views on the so-called Gold Franc Question, was able to delay the holding of the said conference for more than three years by withholding her ratification to the Washington Treaty. Even a nation like Denmark, or Sweden, whose trade in China is insignificant, can obstruct any proposed change in the Chinese tariff system, by refusing or failing to give its approval. Moreover, the policy of most of the treaty Powers is purely selfish. They permit China to develop only in such a way as will give them enormous advantages. Japan, for example, has been blocking any revision of the Chinese tariff which would assist China in manufacturing her own cotton textiles and cotton yarn at a smaller cost than similar goods imported from Japan. The reason why some of the Powers have withheld their approval of the increase of the tariff and the abolition of the *likin* as promised in the British treaty of 1902 is because they argue that such a change would jeopardize

their commercial interests in China. The method of giving every power a vote on any modification of the tariff is absurdly rigid, and makes it impossible for China to obtain relief from the injustice of the treaty stipulations, and to adjust the Customs revenue according to her requirements. Thus writes Chester Holcombe (*The Real Chinese Question*, p. 15):

"The conditions under which foreign commerce was established and is carried on are a serious interference with the revenues of the government. So far as the entire body of foreign export and import trade is concerned, there is no flexibility or power of adjustment left by which the government may regulate the income from that source in accordance with its needs. No matter what exigencies and consequent demands upon the treasury must be met, no help can be looked for in that direction. It fluctuates in amount only as the commerce upon which it is levied shows gain or loss."

But to say that the tariff is too low and that China cannot raise it any higher without the consent of the treaty Power is merely half of the story. What is still worse is that the 5 per cent is, in reality, only nominal. This accounts for the fact that while the total direct trade of China multiplied itself more than seven and a half times between 1867 and 1913, the revenue on the entire trade increased less than fivefold in the same period. Previous to the revision of 1918 the tariff on imports was based on the average values of the three years 1897-1899, as fixed by the Tariff Revision Commission of 1902. After the revision of 1902 the values of the different imported commodities changed and new imports were introduced into China, and as a result of this, most of the goods paid very much below the stipulated rate. Although the tariff of 1902 on foreign imports was to be "cinq pour cent effectifs"—as provided by the Protocol of 1901—it was ineffective from the very start, as was shown

by Sir Robert Breden, formerly Acting Inspector-General of Chinese Customs and one of the principal supporters of the tariff-revision movement. This ineffectiveness increased as time went on. An investigation conducted by the Chinese government several years ago on the values of a number of representative articles and the duties collected thereon revealed the interesting result that while the prices of foreign imports increased very considerably during the period 1911-1917 the rate of the import duty steadily dwindled. In 1911 the average rate actually levied was 4.02 per cent; in 1912 it was 4 per cent; in 1913, 3.98 per cent; in 1914, 3.96 per cent; in 1915, 3.60 per cent; in 1916, 3.13 per cent; and during the first three-quarters of 1917 it amounted to merely 2.89 per cent—a loss equivalent to over 42 per cent. The revisions of 1918 and 1922 have rectified the discrepancy somewhat but not completely. Such is the situation, and yet everybody takes for granted that China has been receiving a full 5 per cent duty on imports all the time.

The ineffectiveness of the tariff means, of course, a material loss to Chinese revenue every year—a loss that has been actually shown, for 1912, by Sir Robert Breden. During that year China had a total foreign import trade of Tls. 425,390,257, excluding the import of foreign opium (Tls. 47,706,774), which was subject to a special duty and was not taxed on a 5 per cent basis. If this import of general merchandise had paid the legitimate 5 per cent, except in cases where a special reduction was legalized, as the rebates on the import trade along the frontiers of Japanese Korea, Russian Siberia, British Burma, and French Tongking, the duty would have amounted to Tls. 20,595,090. The actual sum collected was, however, only Tls. 14,275,764. The evasion of the legal tariff on both the maritime and frontier trade was, therefore, Tls. 6,319,326, or about 31 per cent. This shortage in the Chinese revenue is

now keenly felt, for with the disappearance of the legitimate opium traffic in China, there has come the consequent loss of the receipts from the opium duty, which, in consolidation with the *likin* on opium, contributed approximately 53 per cent to the total charges on the import trade in 1908.

In accordance with the treaty provision for a decennial revision, an attempt was made by the Chinese government, in 1913-1914, to adjust the import duty in order that it might give the full 5 per cent yield. Unfortunately, this met with failure, on account of the unreasonableness of Japan, Russia, and Italy, all of whom endeavored to secure some more special privileges even for this much overdue revision. It was not until November, 1917, after China had joined the war against the Central Powers, that the Entente governments consented to the revision of the import tariff to an effective 5 per cent. The values of merchandise used in this adjustment were those ruling during 1912-1916, two years before, and two years after the commencement of the European war. This import tariff came into force on August 1, 1919, but inasmuch as the 1918 Tariff Revision Commission agreed that "this tariff be subject to revision in whole or in part two years after the war," it was again revised in 1922, with the Shanghai market values for the six months from October, 1921, to March, 1922, as the basis. After some delay the new tariff was put into effect on January 17, 1923, and this is the present import tariff of China, while the export tariff with slight modifications is based on the average values of 1860.

It is worth stating that while, on the one hand, China is denied the full benefit of the Customs as a legitimate source of income; on the other, she has to pay the heavy foreign indebtedness which she was compelled to incur by the treaty Powers in order to meet their expenses for carrying on aggressive wars against her. Furthermore, the

countries which have raised objection to a revision or an increase of the tariff are also the very ones which have been most insistent upon the retention and prompt payment of the indemnities.

The difficulties in connection with the regulation of commerce in China are further complicated by the presence in all the important conventions between China and other states, beginning with the British supplementary treaty, of October, 1843, of the most-favored-nation clause in its unilateral and absolute form. By this provision China accords to all treaty Powers and their subjects, without reciprocity, whatever privileges that may have been or may hereafter be granted to any one of them. That is to say, no distinction is to be drawn between one foreigner and another in the conferring of commercial rights; whatever is accorded to one nation is to be shared by all of them alike. And the French government has even gone as far as to demand participation in all the benefits conceded without being bound by the conditions whereunder those concessions were made, basing its claims on the most-favored-nation clause and on two special stipulations of the French Treaty of Tientsin, 1858.

In some cases the most-favored-nation clause goes further than merely requiring China to treat all aliens on an equal footing; it forbids her to give special privileges even to her own subjects. For example, by the Japanese Protocol of 1896, Article III, goods manufactured by foreigners in the open ports may be liable to such a tax only as "shall neither be other than that payable by the Chinese subjects nor higher." Again, if the Chinese government wishes to close some particular inland waterway to the navigation of foreign launches, it can only do so "provided that Chinese launches are also prohibited from using it." Once more, Article III of the Supplemental Treaty between China and the United States in 1880 provides that "no other kind or higher rate of ton-

nage dues, or duties for imports or exports, or coastwise trade, shall be imposed or levied in the open ports of China" upon American vessels or cargoes "than are imposed or levied on vessels or cargoes of any other nation or on those of Chinese subjects." In 1890 this stipulation was cited by the British minister in his protest against China's attempt to give a bounty to native shipping by reducing the import duties to Chinese merchants who shipped their merchandise in vessels belonging to the China Merchants Steam Navigation Company, the only Chinese steamship company of any importance competing with foreign concerns. In face of the protest the exemption was rescinded by the Chinese Government.

This method of granting privileges has deprived China of the ordinary advantages of independent negotiation and has forced her to concede many valuable privileges and immunities to foreigners without obtaining anything from them in return. Thus writes Sir Robert Hart, Inspector-General of Chinese Maritime Customs during the period 1863-1911 and a competent authority on the existing commercial and administrative situations in China (*These from the Land of Sinim*, p. 66):

"The 'most favoured nation' clause has always stood in the way of change, and prevented the Chinese Government from securing and conceding various ameliorations in exchange for special advantages, seeing that, although new negotiators might be willing to give a *quid pro quo*, their predecessors would claim the advantage but reject and refuse to be bound by the conditions."

Such an arrangement is most unjust and it should be promptly abolished for the simple reason that it takes two to make a bargain, and that if the relations between two countries are to be permanent and beneficial to both parties, they must be founded on the principle of reciprocity and not on that of one-sidedness.

All that China receives for extending the most-favored-nation treatment in its absolute form to aliens within her territories is the "least-favored-nation" treatment of her own subjects abroad. In the treaty engagements between China and other states it is usually provided that just as foreigners in China shall enjoy full protection in person and in property, so Chinese subjects in foreign countries shall be accorded a similar protection. Nevertheless, Chinese laborers are excluded by law from the United States and its possessions and those that are expressly exempt—merchants, students, and travelers—are subjected to the humiliations of minute inquisitions into their character and of anthropometric measurements of their person for the purpose of ascertaining that they are not laborers under camouflage. Then upon their arrival they are treated as if they were criminals and are "detained in the pen on the steamship wharf or imprisoned like a felon until the customs officials are satisfied." Very much the same procedure is followed in all the other countries from which Chinese are excluded. In Canada, Chinese are admitted upon the payment of a poll-tax of \$500. From South Africa all classes of Chinese, with the exception of officials, are excluded, at the discretion of the Immigration Department and in case of failure to pass a dictation test in any European language. They are also denied admission in Australia and New Zealand if they fail to satisfy a reading or dictation test.

Moreover, the status of Chinese residents in foreign countries is insecure. In matters both of residence and of trade they are specially discriminated against and are deprived of the rights, privileges and immunities enjoyed by subjects of the most favored nation. For instance, in the State of California, Chinese children are forbidden to attend the schools for white children. In the Canadian provinces of Quebec and Saskatchewan,

discriminatory laws are enforced against Chinese laundries. And in South Africa, Chinese are subjected to the most humiliating restrictions, such as the limitation of their residence and business within certain locations, the prohibition of their using the same post-office, street-cars, etc., as Europeans, and their exclusion from mining enterprises or dealing in precious metals. All these restrictions and discriminations against Chinese abroad are in utter disregard of international law as well as violative of the treaty stipulations between China and the Powers concerned. It may be expedient and even necessary from the foreigners' standpoint to exclude Chinese from their territories and to treat them with severity and unreasonableness, but to the Chinese such measures constitute an abuse of superior force, and a flagrant outrage on the dignity of their nation. To them the cry of the open door is indeed a hollow mockery, for theirs is the door that is kept open, and it is kept open by the nations which close their own doors against them. It is hardly conceivable that the unjust treatment of the Chinese in foreign countries can be indefinitely continued, and it is high time that the wrongs be redressed and the innocent sufferers be placed on a footing of equality with other aliens. Until this is done the intercourse between China and outsiders will remain unhealthy with a festering sore.

So, to return from our partial digression, the regulation of the foreign trade of China by means of dictated treaties constitutes a marked interference with the supreme authority of the Chinese people on their own soil. The existence of the one-sided conventional tariff has rendered the entire Customs system of China absolutely rigid and inflexible. The Chinese government cannot of its own accord adjust the tariff to the needs of the country, for an alteration of it involves the consent of the treaty Powers, one and all—a condi-

tion which is insurmountably difficult to obtain in practice. Notwithstanding the fact that China is badly in need of revenue, she is forbidden by the treaties to make foreign imports bear their proper share of the country's tax burden. The inability to raise the tariff above the nominal 5 per cent has forced her to continue the suicidal policy of taxing domestic trade more heavily than foreign commerce, and of retaining those harassing levies which are an obstacle alike to her foreign and domestic commercial expansion. Such a situation is certainly detrimental to the development of China. The young Republic is at present passing from the stage of local economy to that of national economy. During this transition economists would consider it a most sound policy for her to promote infant manufactures at home and to revive the old staple industries like tea, which, owing to oppressive taxation and lack of scientific cultivation, are in a state of rapid deterioration. That is as it ought to be. As it is, penalty is imposed on native industry while the advantage is all in favor of imports from foreign countries. No check is placed on foreign goods and China has always been the dumping ground for the surplus products of all nations in the world. In face of such competition from outside it is extremely hard to start any new industry or to resuscitate an old one, and as a result the industrial progress of China is greatly retarded. Thus, at every point native merchants and native merchandise are discriminated against and the whole arrangement from A to Z is equivalent to the management of China for the sole benefit of foreigners. And here, like Chester Holcombe (*The Real Chinese Question*, p. 15), we ask:

"What government, except it be that of angels, could be expected to regard with favor, or to foster with open hand, a commerce thus protected solely in the interest of aliens?"

The Chinese Question

The Underlying Cause of the Present Crisis in China

ARTICLE III

Tariff Autonomy and Abolition of Extraterritoriality

In spite of the hampering restrictions and petty tyrannies which we have described in the two preceding articles, the international intercourse of China has widened and her foreign trade has grown apace until it reached the figure of Tls. 1,676,320,303 in 1923. Now, if the foreign trade of China could triumph over adverse conditions what a wonderful progress it would have made if those conditions were non-existent! However, so long as they stand unremoved, the natural growth of the trade cannot but be seriously hindered.

The time is now far advanced for the abolition of these impediments to trade and intercourse. It is generally recognized that all treaties are concluded under the tacit condition of *rebus sic stantibus* and they shall cease to be obligatory so soon as the state of facts and conditions upon which they were founded has substantially changed. Professor L. Oppenheim (*International Law*, vol. I, pp. 550-551) says:

"When the existence or the necessary development of a state stands in an unavoidable conflict with such state's treaty obligations, the latter must give way, for self-preservation and development in accordance with the growth and the necessary requirements of the nation are the primary duties of every state. No state would consent to any such treaty as would hinder it in the fulfilment of these primary duties. The consent of a

state to a treaty presupposes a conviction that such treaty is not fraught with danger to its existence and development, and implies a condition that, if by an unforeseen change of circumstances the obligations stipulated in the treaty should imperil the said state's existence and necessary development, the treaty, although by its nature unnotifiable, should nevertheless, be notifiable."

Besides being obscure in their phraseology, the conventions between China and the Powers have long been antiquated and have always hindered the free development of the Chinese people. They are not in harmony with the spirit of the times, and must, therefore, be speedily revised and overhauled so as to meet the new world order that is dawning upon us, one in which every peace-loving nation, whether strong or weak, shall have the right to live on equal terms of safety and liberty with the other peoples of the world. Such a revision cannot be denied to China any longer unless the treaty Powers choose to disregard the dictates of justice and pure common sense.

In the revision is to be borne in mind the first principle of international trade, that nations are interdependent and that their prosperity is promoted by the unfettered exchange of their produce; hence all obstacles to such an exchange must be swept away. Moreover, the third of the late President Wilson's famous fourteen conditions of

world peace reads: "The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance." Inasmuch as the restrictions imposed upon China by the Powers operate against her untrammelled self-development, do they not constitute economic barriers? Is not the denial of China's right to regulate her own tariff inconsistent with the establishment of the equality of trade conditions? No impartial observer can answer these questions except in the affirmative. That being the case, it is, therefore, essential that the system of regulating commerce by means of unilateral treaties be annulled, so that the trade between China and the other countries may be promoted and the peace of the world be made just and stable.

The Special Tariff Conference, which has been meeting in Peking since October 26, 1925 in accordance with the Washington Nine-Power Treaty of 1922, is charged with the following duties: (1) to prepare the way for the speedy abolition of the *likin* taxes with a view to levying a duty of $12\frac{1}{2}$ per cent *ad valorem* on foreign imports and one of $7\frac{1}{2}$ per cent on exports, as provided for by the British treaty of 1902 and the American and Japanese commercial treaties of 1903; (2) to consider the interim provisions to be applied prior to the actual abolition; (3) to authorize the levying of a surtax on dutiable imports at the uniform rate of $2\frac{1}{2}$ per cent *ad valorem*, with the exception that on certain articles of luxury the surtax may be 5 per cent; (4) to continue the present charge for transit passes at the rate of $2\frac{1}{2}$ per cent *ad valorem* until the *likin* is abolished. It is our earnest hope, however, that the scope of the Conference will not be limited to the strict letter of the Washington Treaty but will be extended so as to include the more important question of the removal

of all trade restrictions hitherto imposed upon China and the restoration to China of her tariff autonomy at the earliest practicable date.

The tariff autonomy must be restored to China in order that she may formulate and put into force an economic policy in harmony with the interests of her people. This does not mean any desire on the part of China to impose prohibitive customs duties which will drive out foreign goods from the Chinese market. That this is so is amply borne out by the schedule of the National tariff which was promulgated on December 25, 1917 and which is now applied to countries not enjoying the conventional uniform duty of 5 per cent *ad valorem*. Under the National Tariff imports are classified and taxed as follows: (1) luxuries, 20 to 25 per cent; (2) non-necessaries, $17\frac{1}{2}$ per cent; (3) ordinary articles, $12\frac{1}{2}$ per cent; (4) necessities, which comprise the largest part of Chinese imports, 5 per cent; and (5) a big list of articles entitled to exemption. China is not so foolish as to pursue the suicidal policy of destroying her international trade by a high tariff wall. All that she wants is what each of the treaty Powers has assumed for itself as a matter of course, namely, a tariff that is sufficiently responsive to changes both at home and abroad, such a one as will meet her fast-growing fiscal needs and satisfy her awakening industrial and commercial requirements. To deprive China of her tariff autonomy is certainly an open attack upon her independence. For the right to regulate the tariff is a part of the larger right of taxation, which belongs to the sovereign authority of every state. Unless the repeated proclamations of the Powers on the sacredness of the rights of all states, whether they be strong or weak, are to be mere barren form of words, this encroachment upon the territorial sovereignty of the Chinese people must be promptly removed. Justice demands that China shall have the

power to fix her own tariff, and when this is restored, for restored it must be, we can look forward to an unprecedented development in her industry and commerce in general.

If the foreign trade of China is to have an unimpeded development it is necessary that, in addition to the restoration of the tariff autonomy, the whole country be thrown open freely to international trade and residence. But this requires the abolition of the present precarious system of conducting relations between the Chinese and the foreigners—an arrangement which was thrust upon China by the illegality of brute force—and its replacement by an equitable regime which all will accept and maintain. In short, this means the relinquishment of all extraterritorial privileges and immunities by the treaty Powers and the introduction of a more uniform system of Chinese jurisprudence and administration. This change is doubtless radical, but it is one which strikes at the root of the mischief that runs through every article of the treaties, the one factor that has undermined the authority of the Chinese Government and blocked all permanent good relations between China and the outside world. In this connection Sir Robert Hart writes (*These from the Land of Sinim*, pp. 145-146):

"Such a change of principle in the making of treaties would widen and not restrict the field for both merchant and missionary, and would simplify and not complicate the work of both consul and minister—would do away with irritating privileges and place native and foreigner on the same footing—and would remove the sting of humiliation and put the Government of China on the same plane as other governments... It may have been—and may still be—expedient and even essential from the foreigner's point of view and the necessities of commercial law to stand on Chinese soil with the aegis of extraterritoriality and the procedure

of their own courts; but to the Chinese eye this is a spear and not a shield, and until it is withdrawn there can be no assured dwelling at ease—no real welcome for foreign intercourse. Restore jurisdiction, and the feeling of the responsibility to protect as well as the appreciation of intercourse will at once move up to a higher plane."

The abrogation of extraterritoriality in China is conditionally assured by Great Britain, the United States, and Japan in their treaties signed with China in 1902 and 1903. Each of these Powers has promised "to give every assistance" to China's judicial reform and "will also be prepared to relinquish her extraterritorial rights when she is satisfied that the state of the Chinese laws, the arrangement for their administration, and other considerations warrant her in so doing."

In view of these promises China brought up the question of the abolition of extraterritoriality at the Paris Peace Conference in 1919, but the Powers rejected the proposal and, what was still worse, sanctioned Japan's control over the German interests in Shantung. It was not until 1921, at the Washington Conference, that the Powers recognized that the problem deserved serious study and consideration and adopted a resolution to the effect that the governments of the signatory Powers, including China, shall establish a Commission to which each shall appoint one representative "to inquire into the present practice of extraterritorial jurisdiction in China, and into the laws and the judicial system and the methods of judicial administration of China, with a view to reporting to the governments of the several Powers their findings of fact in regard to these matters, and their recommendations as to such means as they may find suitable to improve the existing conditions of the administration of justice in China, and to assist and further the efforts of the Chinese Government to effect such legisla-

tion and judicial reforms as would warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality." Each of the Powers and China "shall be deemed free to accept or to reject all or any portion of the recommendations of the Commission." This Commission, which has been delayed for over three years, is scheduled to meet in China on December 18 of this year and it is our earnest hope that the legitimate aspirations of the Chinese people will be respected and steps will be taken to remove the existing limitations upon China's political, jurisdictional, and administrative freedom of action at the earliest practicable date.

The Chinese have long desired the recovery of jurisdiction over aliens within their borders and have been earnestly working towards that goal. They have been reforming their judiciary and revising their civil, criminal, and commercial codes in accordance with modern principles of jurisprudence. The Law Codification Commission has been sitting since 1904 and has completed the codification of the Civil Code, the Criminal Code, the Code of Civil Procedure, and the Commercial Code, some of which have already been put into force. The new system does away with numerous anachronisms and heralds many changes. Among the important innovations introduced are the establishment of a competent independent judiciary and the creation of three proper grades of courts with their corresponding procuratorates, namely, (1) District Courts (*Ti Fang Shen Pan Ting*) in each prefecture (*Fu*), (2) High Courts (*Kao Teng Shen Pan Ting*) in each provincial capital, and (3) The Supreme Court (*Ta Li Yuan*) at Peking, which is the highest Court of Appeal for the whole of China. The system also provides for the admission of qualified lawyers into the courts to act for litigants, the adoption of the

principle of reformatory punishment, and the institution of model prisons throughout the country. Although the Chinese judicial administration is still in the transitional stage and falls short of the requirements of modern jurists, yet a review of what has been accomplished shows that China has made great progress in the path of legal reform.

Moreover, Germans, Russians, Austrians, and the subjects of the states grown out of the dismemberment of Russia and Austria, such as Poland, Czecho-Slovakia, and Rumania, are now under Chinese law and jurisdiction. A number of important cases involving the interests of these foreigners have been tried by the Chinese courts, and, as far as the facts are known, there has been no miscarriage of justice. As a matter of fact the Germans and the Austrians claim that they have actually benefited by the relinquishment of their extraterritorial privileges in China.

Progress has also been made in other directions, more particularly along educational, industrial, and commercial lines. This advance is, however, very little known, much less appreciated abroad, where the political affairs of China have been monopolizing public attention to the exclusion of every other phase of Chinese life, and especially, where exist the powerful publicity agencies of certain imperialistic nations, whose aim is to make the world at large believe that China is in a state of semi-anarchy, and therefore needs their guardianship. Commenting on the real growth of China during recent times the *North-China Herald* (July 13, 1918, v. 65) writes:

"The permanent improvements which have been made in hundreds of Chinese cities during the past seven years, the roads built, the thousands of small and large industrial plants erected, the improvements in sanitation, the schools, colleges and hospitals endowed and opened, the hills reforested, the mines developed, the newspapers

established and the remarkable growth of knowledge of foreign affairs during a period of unceasing political turmoil punctuated by a series of natural calamities and blanketed by a war-trade depression, are conspicuous evidences of wholesome progress and of a genuine interest among the people in improvements and innovations. Although an administrative scandal in Peking is eabled to every Occidental capital while the erection of a new factory in Wuhu or of a new girl's school in Nanking is described locally in an inconspicuous paragraph, we all know, if we stop to consider, that the building of a school or a factory in the provinces is a much more significant omen of the tendencies of the Chinese people than a squabble within the mandarin ranks; but with politics so blatantly conspicuous, it is exceedingly difficult to be just and fair to the people who have yet to make their influence felt upon the administrative systems which in no sense represent them."

Foreign observers often complain that China's progress has been slow. This may be freely admitted. However, if we consider the onerous restrictions forced upon her by the treaty Powers and realize the vastness of the country, it will at once be seen that the slow rate is inevitable. As a matter of fact, we shall be wondering how any growth at all has been possible under such circumstances. Subjected to all sorts of foreign interference, and inhabited by a population approximately greater than those of the United States, the British Isles, Germany, France, Spain, Italy, Austria, Belgium, and the Continent of South America combined, speaking several dialects, and assimilating modern culture from different sources, the problems now facing China may be appropriately compared with those of Europe as a whole. It is evident that the prompt solution of these problems would require the best efforts of a super-nation, and as there is no

such a nation in existence the solution can only come slowly.

Moreover, it is a political maxim that all reforms, in order to be lasting, must be gradual. A nation rests on existing laws, customs, and practices, and to alter these at one stroke would throw society into a state of chaos and lawlessness. Whatever betterment is to be inaugurated should not fail to take into consideration the character of those participating, the soul of the people concerned, which is always hard to change. In other words, reforms must be built on old foundations, and hence must be gradual. "It is better to be slow than sorry," runs the wise old saying; and we must not forget that in the East more haste always means less speed. Nevertheless, the rate of progress in the past constitutes no criterion for that in the future. Being a large body, the Chinese nation moves slowly only at first, but as it progresses it is bound to increase its momentum. So henceforth China will advance more rapidly than heretofore.

Then the foreigners who pretend to be friends of the Chinese incessantly harp on the disturbances in China, saying that the country is in a state of anarchy, that the Chinese people are not fit for self-government, and that they must be placed under international tutelage. Arguments like these have been widely circulated by interested parties, whose sole aim is to see a weak China, one which will allow them to perpetuate their control and interference in the affairs of that country. The Chinese are now in the midst of a great transformation. Everywhere the old order is changing, giving place to the new. The ancient ideas and hoary traditions and customs are being discarded and a new scheme of life that is foreign in origin is being gradually absorbed. Such a transition necessarily brings forth discord and dissension. For national transformation is fundamentally a struggle for advancement; it is a conflict between the new and the old ideals

of a people, and the conflict will go on until a new system is evolved and incorporated into the life of the nation. Viewed in this way the various ills which have rendered China unsightly before the eyes of the foreigner are nothing but the natural outcome of the attempt to adjust a nation, that has for hundreds of years been isolated from the rest of the world, to the new environment created by the invasion of extraneous ideas and the introduction of Western culture.

Although common to the history of every nation during its period of creative change, the internal disorders in China and the different complications that constitute what is known as the "Chinese Question" have suffered severe criticism at the hands of many a foreign writer. There is really no cause for discouragement at China's struggle for a reformed and stable central government. Rome was not built in a day. Neither can a modern democracy be instituted in fourteen years in a country which has had centuries of absolutism. It is to be borne in mind that those Latin-American republics, which today are stable and prosperous, were for many decades in a state of confusion and distress, and we must not forget that it took the long years between 1776 and 1865 for the great American nation to establish itself firmly. However hopeless the present political situation in China may appear to be, it is encouraging to note that the Chinese people, both at home and abroad, are taking an increasing interest in the public affairs of their country, and there has developed in them a feeling of nationalism, which, though still ill-defined, is making itself felt in a positive way, and will in time overthrow the militarism of the selfish war-lords and give to China a truly democratic government. Early in 1917 there was published in Shanghai the largest book yet issued on the geography, the economic resources, and the commercial development of China. *The New Atlas and Commercial Gazetteer of China*, as

the book is entitled, is surely the best work on the resources of the Oriental Republic, and nobody can go through it without being impressed by the splendid future that is before China, provided she is given a chance to develop herself without shackles.

China has not been negligent of her duty. She has been trying to set her house in order to the end that some day her complete autonomy may be recovered. But considering the stringency of her financial situation and the vastness of her territory, the problem is a stupendous one and she cannot solve it single-handed. She needs the effective assistance of the treaty states, one and all. While we do not expect any nation to be altruistic in extending its national interests in China, we nevertheless look for a spirit of friendly reciprocity in its dealing with the Chinese people. If the unimpeded development of trade is to be attained the treaty Powers must work together with China. Both parties must approach each other with respect and not contempt, with compromise and not coercion. They must proceed in a spirit of give-and-take and not of take alone and no give at all. In short, there must be intelligent and sympathetic cooperation through mutual concession. Cooperation and not opposition spells success to every undertaking. It must, therefore, be the key-note for the rehabilitation of China.

Thus far, however, there has been too much preaching on the part of the Powers with scarcely any encouragement. As a matter of fact, China has never been permitted to develop herself peacefully, for across her path of reform there is ever falling the shadow of foreign interference and aggression. She is encircled by enemies disguised as friends, who are always insistent upon onerous conditions in their financial transactions with her and in whose actions are concealed plans for territorial aggrandizement. China's task is, thus, made intolerably hard. She has, on

the one hand, to reconstruct her internal administration in the light of modern requirements, and, on the other, to preserve the country against the forces of disintegration from without.

It is the profession of all the great Powers that they favor the rejuvenation of China into a first-class nation, and they have agreed "to give every assistance" to her reforms, and "to provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government." But in practice they are all more or less opposed to any change which will tend to strengthen the young Republic, although they never cease to clamor about the inconveniences resulting from the archaic methods of Chinese administration. Their actions indicate clearly that the kind of reform they desire for China is only so much progress as would create opportunity for foreign enterprises and yet retain China in leading strings, so that her alleged backwardness may always serve as a pretext for the carrying out of their selfish designs in her dominions whenever they deem it necessary. A few instances will make this obvious. One of the most conspicuous examples is the refusal of the Powers to give China a flexible tariff, which will meet her requirements and permit the introduction of those reforms without which she cannot develop fully in any direction. This has been sufficiently discussed in the preceding article and it is needless for us to dwell on it again. Another is the policy of weakening the Chinese Government by burdensome indemnities and other financial exactions. Then there is the pursuance of the dog-in-the-manger policy in what each power regards as its "sphere of influence." In the first part of 1917, for example, the French Government lodged a protest at Peking against the construction of a railroad by an American firm in the province of Kwangsi, where France claimed exclusive rights by virtue

of an arrangement which gave her financiers the first privileges of supplying capital for all railway and mining projects in Kwangsi. Although the money for the enterprise had been subscribed by the Americans, and the French were not in a position to furnish the requisite capital, because at that time they were borrowing heavily in the United States for war purposes, nevertheless the scheme was forced to be withdrawn to nobody's real advantage, but to the great loss of China, who is sorely in need of an adequate system of transportation. Similarly, Japan has blocked many a legitimate American project in China, and in 1913 the Japanese successfully shut the door in Fukiien against the Bethlehem Steel Corporation, which was then attempting to assist the Chinese Government in constructing a dockyard in that province; and again the growth of China was checked. Such instances of the selfish and disruptive policy of the Powers may be greatly multiplied, but space will not permit the attempt. Finally, we may mention the fact that the scramble of foreign equipment contracts hinders the industrial development of China. In contracting foreign loans for railway and other industrial purposes the Chinese are invariably required to promise expressly that the funds so obtained will be spent in the country of their origin. Accordingly, large quantities of materials have to be imported from abroad every year, which would otherwise be supplied at home as much as possible, to the end that the development of Chinese industries may be quickened.

The hostility of practically all the treaty Powers to genuine reform in China is to be explained by their apprehension that some of the tendencies and necessary results of the Chinese renaissance are dangerous. Seeing that their so-called "interests" in China are in a large measure based on conditions which real autonomy will sweep away, foreigners contend that the rehabil-

itation of the ancient Empire and its establishment on a footing of equality with other states would impair their special status in the country. To some extent this is true, for every reform carries with it a vicarious sacrifice. If the world is to be ruled by law instead of by self-interest and force, latent or expressed, then the highly privileged aliens in China must be willing to give up their peculiar rights. But for whatever loss they may have to suffer the foreigners will be fully compensated, inasmuch as China's regeneration will accelerate her industrial and commercial development, the enormous profits of which will be reaped by all nations alike.

In discussing the development of China it is often asserted that with the advance of the Chinese into a manufacturing nation the chances for outsiders to sell goods in that country will be gradually reduced. Such statements are erroneous and find no support in fact. It has been demonstrated that the American share of the foreign trade of Japan has increased hand in hand with the rise of Japanese manufactures. Moreover, in its final analysis, the question of foreign trade expansion and the internal development of China are closely connected. The former is dependent upon the latter. International trade is, in essence, barter. In order to be permanent it must be reciprocal and not mainly one-sided. If the great manufacturing nations expect China to continue to buy their products, they must enable her to sell her goods in return. What she can buy from them is limited by what they can buy from her. The purchasing power of the Chinese people must be raised, or else they cannot buy foreign imports in large and increasing quantities and the way to do this is to encourage them to produce those commodities which they are especially qualified to supply. In other words, the growth of Chinese industries must not be hindered, but must be facilitated and fostered, if foreign trade is to expand

freely in the Celestial Republic. Industry is a veritable handmaid to commerce.

The fallacy that the regeneration and industrialization of China will operate to the detriment of the foreigner's commercial interests in that country was exposed in a vigorous fashion by ex-President Taft during his visit at Shanghai in October, 1907. On that occasion he averred (*The North-China Herald*, October 11, 1907, p. 101):

"The United States and others who favor the open-door policy sincerely will, if they are wise, not only welcome, but will encourage this great Chinese Empire to take long steps in administrative and governmental reforms, and in the development of her natural resources and the improvement of the welfare of her people. In this way she will add great strength to her position as a self-respecting Government, may resist all possible foreign aggression seeking undue, exclusive or proprietary privileges in her territory, and without foreign aid, can enforce an open-door policy of equal opportunity to all. I am not one of those who view with alarm the effect of the growth of China with her teeming millions into a great industrial empire. I believe that this instead of injuring foreign trade with China would greatly increase it, and while it might change its character in some respects, it would not diminish its profit. A trade which depends for its profit on the backwardness of a people in developing their own resources and upon their inability to value at the proper relative prices that which they have to sell and that which they have to buy is not one which can be counted upon as stable or permanent...."

"For the reasons I have given, it does not seem to me that the cry of 'China for the Chinese' should frighten anyone. All that is meant by that is that China should devote her energies to the development of her immense resources, to the elevation of her industrious people and to the enlargement of her trade and

to the administrative reform of the Empire as a great national Government. Changes of this kind could only increase our trade with her. Our greatest export trade is with the countries most advanced in business methods and in the development of their particular resources. In the Philippines, we have learned that the policy which is best for the Filipinos is best in the long run for the countries who would do business with the Islands."

Under existing conditions the attempt of the foreigner to expand his trade in China is simply ridiculous. It would redound more to his commercial intelligence if he would stop putting obstacles in his own way and discontinue his selfish policy of paralyzing the internal development of a most promising market by all kinds of hampering restrictions.

Of all the great Powers which have declared that they want China to become a strong and virile nation, able to maintain her own place in the world, there is only one, it is to be frankly admitted, which actually desires such a consummation, and that is the United States of America. America has never committed any act of aggression in China nor has she ever attempted to secure unfair and exclusive commercial privileges there. On the contrary, her avowed policy towards the Oriental Republic has always been one of friendship and helpfulness, showing intelligent sympathy for China and her cause. It aims at the promotion and protection of the legitimate commercial interests of American subjects in China and supports the open-door doctrine of equal opportunity for all. It is, therefore, strictly in keeping with American liberal traditions and democratic ideals that the United States should recognize the justice of the Chinese demand for the abolition of all impairments of their sovereignty and the removal of all treaty restrictions which have made their country an economic slave of the great commercial nations; and

she should lead the way in according China the equality of treatment by the Powers of the world who claim to be civilized.

The European War has widened the international interests of the United States and it is now difficult to conceive how the American nation can remain indifferent to the fate of the Chinese people. The Pacific Ocean is becoming the center of human interest and commercial activity, and China, with her four hundred million people, is its true axis. From whatever undermines China's independence and integrity the United States cannot hope to escape unaffected. For with their economic progress and their advance as a Pacific power, and also as a nation determined to keep alive the spirit and forms of democracy in the world, the future peace and prosperity of the American people is bound up in the satisfactory solution of the present precarious situation in the Far East, more particularly in China.

There is no time more fitting and more opportune than the present for restoring to China the full liberty appertaining to a sovereign nation. The Great War has taught nations the value of peace, and they are now willing to think and even to act in terms of peace. People everywhere today are more disposed to heed the voice of reason and justice. Firmly convinced that the unparalleled sacrifices which have been made in the battlefields of Europe shall not have been made in vain, they are all in one accord that the peace which is to be attained shall be just and permanent. They are strongly resolved that the new era which is dawning upon us shall be one in which the world will receive the blessings of order and liberty, of justice and lasting peace. In short, there has been developed a new and powerful feeling of community of interest among nations; and peoples, regardless of color and creed, and even at some sacrifices of national pride and ambition, are cooperating in a way hitherto unknown, to the end that

the "unprecedented things" mentioned by the late President Wilson may be accomplished. A great moral wave for the reign of justice and peace towards all men is indeed encompassing humanity. But we must make use of the wave while it is still at the crest, for waves flatten out rapidly and disappear.

As an ally of the victorious Entente during the European War, fighting to make the world safe for democracy, safe for every peace-loving nation, which "wishes to live its own life, determine its own institutions, and be assured of justice and fair dealing by the other peoples of the world as against force and selfish aggression," China, the most populous and one of the youngest among the republics of the world, as well as the most peaceful of them all, is justly entitled to the full recognition of her real autonomy by the great Powers. If the War was indeed a war for democracy, for the liberty and equality of weak and strong nations, and if it is the duty of the associated Powers, as the late President Wilson said at Paris in his plea for a League of Nations on January 25, 1919, "to see that every people in the world shall choose its own masters and govern its own destinies, not as we wish, but as they wish," then the Powers cannot deny to China the complete freedom to work out her own national development in accordance with the welfare of her people. "A consistent democracy," says Lord Balfour, "leaves the people of each country the right to form their own government according to their own ideas, and based on their own history, character, and hopes." If the peace of the world is to be enduring it must be based upon justice and righteousness towards all nations, be they great or small, powerful or weak. And the voice of prudence and justice counsels the great Powers to treat China with consideration and to show some regard for her just claims and interests. It is to be remembered

that the Chinese are normal human beings, swayed by the same feelings and purposes which influence other peoples; and as such they must be given a fair chance to live and to demonstrate their spirit of initiative and enterprise in their own land, a chance that has been denied to them by the mailed fist of the treaty Powers.

But if in solving the Chinese Question the great Powers choose to continue the old selfish and disruptive policy of subjugating China and exploiting her for their own chief benefit, thereby keeping her in a state of political and economic semi-paralysis, rather than to apply those principles which they all were vociferous in announcing as their objects in the War and those which they adopted at the Washington Conference in 1922 for dealing with matters concerning China, then China will surely be the scene of approaching commercial jealousies among nations, the arena of coming diplomatic wrangles, and the seat of future world wars. If, instead of being handled justly and equitably, the problem is simply glossed over, as of old, with the fallacious and mischievous idea widely prevalent among foreigners that anything "goes" in China and that anything will do for the Chinese, the evil day cannot be long averted. Now that China is demanding for the removal of all impairments of her sovereignty the acid test will be applied to all professions of disinterestedness and humanity.

The Chinese are now passing through a great national transformation, and what they will be in the future depends largely upon what policy the other countries adopt towards them today. Whether peaceful China will remain peaceful and progressive or become a warring nation, menacing the rights of other peoples, depends upon her present treatment by the Powers in these days of creative change. To be more specific, China's future relation to the world depends upon the spirit with which the great

Powers tackle the whole Chinese Question at the Special Tariff and Extraterritoriality Conferences in China this fall.

So the destiny of China and the future peace of the Far East, and hence of the world, lie in the decision of the treaty Powers as to their policy *vis-à-vis* the young Oriental Republic. Their choice is a simple one. They may choose to obstruct and destroy, as they have been doing since the middle of the last century, or they may choose to restore and cooperate, as the new world order demands. The first violates and cripples China's autonomy, diminishing her power of resistance against the constant foreign aggressions aiming at her subjugation and at the wresting of exclusive commercial privileges within her territory, and so leads to the clash of antagonistic ambitions and designs among the Powers. The sec-

cond stimulates the development of China into a strong and progressive nation, capable of holding her own position in the world and of maintaining, without outside help, the open-door policy of equal opportunity for all, thereby eliminating international jealousies and intrigues from the Far East. The one creates international rancor and race-hatred, and is destructive alike of foreign trade and other foreign intercourse. The other is conducive to the good-will and comity among nations, and permits the unlimited expansion of all foreign intercourse, commercial and otherwise. The one is productive of evil, the other of good. The one leads to war, the other to peace. The one is for the misery and downfall of mankind, the other for its happiness and advancement. Which shall it be? Obstruction and Destruction or Restoration and Cooperation?



Tsekung asked, saying, "Is there one word which may serve as a rule of practice for all one's life?"

The Master said, "Is not RECIPROCITY such a word? What you do not want done to yourself, do not do to others."

—Confucian Analects.

